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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,620	01/16/2004	Charles A. Eldering	T708-14	1665
81712 7590 10/15/2009 Carlinco, Spicer & Kee, LLC 2003 S. Easton Road, Suite 208 Doylestown, PA 18901				
EXAMINER				
CHIN, RICKY				
ART UNIT		PAPER NUMBER		
2423				
MAIL DATE		DELIVERY MODE		
10/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,620

Applicant(s)

ELDERING ET AL.

Examiner

RICKY CHIN

Art Unit

2423

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-18, 22, 23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-18, 22, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/29/09 has been entered.

Response to Arguments

2. Applicant's arguments filed July 29, 2009 have been considered but are moot in view of the new ground(s) of rejection.

Furthermore, applicant argues that the combination of Carles, Bryant and Del Sesto does not teach or suggest "receiving a plurality of requests for advertisement presentation, each request associated with an advertisement an... wherein each of the plurality of requests may be fulfilled by inserting the associated advertisements into one of a plurality of available advertisement opportunities". The examiner respectfully disagrees. Del Sesto teaches of receiving a plurality of requests for advertisement presentation (See col.3 lines 1-20 and Fig.5g which discloses multiple bids may be placed for a variety of multiple advertisement avails), each request associated with an advertisement (See col.3 lines 1-20 and Fig.5g- Fig. 5Q which discloses the bidder entering parameters for a desired avail of an advertisement), each request may be

fulfilled by inserting the associated advertisements into one of a plurality of available advertisement opportunities (See col.2 lines 44-60 which discloses being able to verify that the advertisements were actually run according to the contract and col.5 lines 49-60 which discloses frequency of how often and when the commercial should be aired, thus having a plurality of available advertisement opportunities in which to insert the commercial). Hence, the limitations do not overcome the combination of Carles, Bryant, and Del Sesto.

Applicant also argues that the combination of Carles with Bryant and Del Sesto is improper in that Carles cannot properly be modified by both the teachings of Del Sesto and the teaching of Bryant as the modified system would not be able to select advertisements based on the bandwidth as required by a combination of Carles and Bryant. The examiner respectfully disagrees. Del Sesto teaches of search queries for finding an avail to match requirements and parameters set forth by the buyer such as demographics, age, number of viewers etc. Del Sesto does not explicitly teach of wherein the parameters teach of bandwidth requirements. However, as realized to one of ordinary skill in the art such as Bryant which discloses selecting a signal based on the bandwidth of the signal such that the segments may be fit properly into the stream and by Hane US 2006/0041921 which discloses desiring to book a small amount of bandwidth and of determining the technical capabilities to satisfy the request (See [0045] and [0054]), it is evident that a parameter such as bandwidth requirements for the bidding and selling of advertisement avails is well known in the art, thereby making the combination of Carles, Bryant, and Del Sesto proper.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

New Matter

4. Claims 1-3, 5-8, 10-18, 22, 23, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant refers to the specification of the present invention (paragraphs 74-78 and 81-82) as to disclose the newly added claim limitations. However, as for claim 1, nowhere in the cited paragraphs is "presenting a purchase offer for the advertisement opportunity to advertisers associated with the selected two or more targeted advertisements in response to the selecting two or more targeted advertisements, wherein the selecting is done by associating the selected advertisements that fit the avail bandwidth and subscriber characteristics" recited as to allow a certain subset of advertisers that have submitted a request for advertisement presentation of receiving the purchase offer as argued in applicants arguments (Page.10). In contrary, the specification (paragraphs 74-78 and 81-82) recites announcing the avail opportunities to various advertisers and ad sources wherein correlations are made to determine a price (thus, the offer is sent to

numerous advertisers with disregard to matching characteristics and matching bandwidth) and allowing these advertisers/ad sources to submit appropriate bid/bids for the advertisement where after evaluation, the sales/auktioning module either accepts or declines the bids (where the details of the evaluation process for accepting or declining a bid is also not disclosed). Hence, there is no disclosure in the specification as to presenting a purchase offer for the advertisement opportunity to advertisers associated with the selected two or more targeted advertisements in response to the selecting two or more targeted advertisements, wherein the selecting is done by associating the selected advertisements that fit the avail bandwidth and subscriber characteristics. In other words, the specification does not disclose a means for selectively filtering out the requests according to matching avails and subscriber characteristics as to present an offer to only a subset of selected requests based on matching bandwidth and characteristics.

With regards to claim 22, no where in the cited paragraphs is "transmitting, to at least one second computing device, .a purchase offer for insertion of the advertisements within the set of advertisements to advertisers associated with the selected advertisements in response to the selecting the set of advertisements, wherein only advertisers associated with the selected advertisements receive the purchase offer; receiving, in response to the purchase offer, one or more bids associated with at least one of the advertisements in the set of advertisements for insertion of the advertisements into the program stream" recited as to allow a certain subset of advertisers that have submitted a request for advertisement presentation of receiving

the purchase offer and for allowing only the selected advertisers of placing a bid as claimed and argued in applicants arguments (Page 10).

With regards to claim 25, no where in the cited paragraphs is " correlating the subscriber characteristics of the first advertisement opportunity and the target market characteristics of each request of the subset of advertisement presentation requests; selecting two or more requests from the subset of advertisement presentation requests based at least in part on the correlating; presenting, to advertisers associated with the selected two or more requests, a purchase offer for the first advertisement opportunity" recited as to allow only a certain subset of advertisers being correlated and for allowing only the subset that have submitted a request for advertisement presentation of receiving the purchase offer as well as for allowing only the selected subset of advertisers of being able to place a bid as claimed and argued in applicants arguments (Page.10)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-3, 5-20, 22-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carles, US 5,661,516 in view of Bryant, US 5,652,615, in further view of Del Sesto, US 6,985,882, and in further view of Feezell et al., US 6,253,189.

Regarding claim 1, Carles discloses of a method for managing selection and insertion of advertisements (See Abstract), the method comprising: determining subscriber characteristics (See col. 3 lines 1-15- col. 4 lines 1-10 which discloses identifying and providing information about categories of recipients and groups of households defining its region) for an advertisement opportunity within a program stream (See col. 3 lines 40-65 which discloses breaks in program material for commercial insertion for each household); receiving at least one request for advertisement presentation (See col. 3 lines 30-62 which discloses the insertions for each subscriber during each break are determined by the CMMS 11 and are communicated to server 10 for insertion into schedule 31. Therefore, a request is being made by the CMMS and being received by the server), the at least one request including advertisement characteristics, comprising intended target market characteristics (See col.3 lines 44-55 which discloses that based upon information contained in the commercial muting database and information embedded in the commercial message CMMS will select certain households to receive certain commercial messages and will convey that information to server 10 for storage in commercial message schedule 31, thus comprising of an intended target market of households); and selecting targeted advertisements for insertion into the advertisement opportunity, wherein the targeted advertisements are selected by correlating the

intended target market characteristics to the subscriber characteristics (See col.3 lines 16-60 and col. 4 lines 66-col. 5 lines 1-45 which discloses the CMMS communicating to the server for insertion into the schedule and determining the commercials to be sent to a subscriber based on profile household data in profile database 36. Furthermore, correlation of the intended market characteristics to the subscriber characteristics is further exemplified by the categories of goods and services which are part of the embedded information and using syndicated research whereby a representative sample of a high frequency user or customer for the given product is selected whereby targeted households are characterized for the product or service and ratings are given for each category of goods/services with a higher rating being a more likelihood of a purchase)

Carles does not explicitly teach of determining an avail bandwidth and minimum bandwidth requirements, wherein the minimum bandwidth requirements represent required amount of bandwidth available within the program stream for the advertisement to be inserted, wherein the targeted advertisements are also selected by comparing the avail bandwidth to the minimum bandwidth requirements.

However, in the same field of endeavor, Bryant teaches of determining an avail bandwidth and minimum bandwidth requirements (See col. 4 lines 37-45 and Fig. 3 which discloses the relative indication of bandwidth requirements and col. 5 lines 4-9 which discloses determining the allocated bandwidth available for the base and fill segments), wherein the minimum bandwidth requirements represent required amount of bandwidth available within the program stream for the advertisement to be inserted and wherein the targeted advertisements are also selected by comparing the avail

bandwidth to the minimum bandwidth requirements (See col. 5 lines 4-9 which discloses that for a 6Mb/s signal , up to 3.0 Mb/s or four 1.5 Mb/s fill segments can be concurrently broadcast. Hence, in order to be able to allocate the bandwidth necessary to fill the fill segments, the bandwidths of the fill segments must be first determined to see if they would fit the required bandwidth of the signal in combination with the other fill segments if concurrently broadcast. Therefore, fill segments which are too big and use up too much bandwidth cannot fit with other fill segments concurrently cannot be used making selection based on comparing avail bandwidth to minimum bandwidth requirements necessary).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles to incorporate determining an avail bandwidth and minimum bandwidth requirements, wherein the minimum bandwidth requirements represent required amount of bandwidth available within the program stream for the advertisement to be inserted, wherein the targeted advertisements are also selected by comparing the avail bandwidth to the minimum bandwidth requirements as taught by Bryant to allow a quality and successful insertion of a targeted advertisement to occur by preventing overflow and making efficient use of the available bandwidth.

The combination of Bryant and Carles further teaches of containing the results of the correlation (See Carles, col. 5 lines 20-47 and col. 8 lines 57-67 which discloses that advertisers may purchase advertising time based on the calculated correlation of the subscribers). The combination does not explicitly teach of presenting a purchase offer

for the advertisement opportunity to advertisers associated with the selected targeted advertisements, the purchase offer containing the results of the correlation; receiving one or more bids from at least one of the advertisers for the advertisement opportunity; selecting a winning advertiser based at least in part on the one or more received bids, receiving a plurality of requests for advertisement, each request associated with an advertisement, and each request may be fulfilled by inserting the associated advertisements into one of a plurality of available advertisement opportunities.

However, in the same field of endeavor, Del Sesto teaches of presenting a purchase offer for the advertisement opportunity to advertisers associated with the selected targeted advertisements (See Abstract and Figs. 5E-5R which discloses offers to purchase the advertisement opportunities to advertisers), the purchase offer containing the results of the correlation (See col.5 lines 34-48 which discloses a buyer bid containing information such as demographic of the commercial; an avail which indicates a piece of time available; and of an avail bid which indicates a relationship between an avail and a buyer bid); receiving one or more bids from at least one of the advertisers for the advertisement opportunity (See Abstract and Figs. 5E-5R which discloses receiving bids); selecting a winning advertiser based at least in part on the one or more received bids (See Abstract and Figs. 5E-5R which discloses running the advertisement according to the contract), receiving a plurality of requests for advertisement presentation (See col.3 lines 1-20 and Fig.5g which discloses multiple bids may be placed for a variety of multiple advertisement avails), each request associated with an advertisement (See col.3 lines 1-20 and Fig.5g- Fig. 5Q which

discloses the bidder entering parameters for a desired avail of an advertisement), and each request may be fulfilled by inserting the associated advertisements into one of a plurality of available advertisement opportunities (See col.2 lines 44-60 which discloses being able to verify that the advertisements were actually run according to the contract and col.5 lines 49-60 which discloses frequency of how often and when the commercial should be aired, thus having a plurality of available advertisement opportunities in which to insert the commercial). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Bryant and Carles to incorporate presenting a purchase offer for the advertisement opportunity to advertisers associated with the selected targeted advertisements, the purchase offer containing the results of the correlation; receiving one or more bids from at least one of the advertisers for the advertisement opportunity; and selecting a winning advertiser based at least in part on the one or more received bids as taught by Del Sesto for the mere benefit being able to display the correlation results to potential bidders in conjunction with the other information of the avail as to better characterize the advertisement opportunity to the potential buyers in order to maximize profits by auctioning off advertisements opportunities to advertisers and to meet the advertisers target audience for better sales.

The combination of Carles, Bryant, and Del Sesto does not explicitly teach of selecting two or more targeted advertisements associated with the received plurality of requests, wherein each of the selected advertisements fit the avail bandwidth and subscriber characteristics of the advertisement opportunity and of presenting a

purchase offer for the opportunity to advertisers associated with the selected two or more targeted advertisements in response to the selecting two or more targeted ads, the purchase offer containing advertisement opportunity characteristics, and in response to the purchase offer, receiving one or more bids.

However, in the same field of endeavor, Feezell teaches of selecting two or more targeted advertisements associated with the received plurality of requests, wherein each of the selected advertisements fit the avail bandwidth and subscriber characteristics of the advertisement opportunity and of presenting a purchase offer for the opportunity to advertisers associated with the selected two or more targeted advertisements in response to the selecting two or more targeted ads(See col.7 lines 1-30 and 63 – col.8 lines 27 which discloses a bid button being available upon meeting the buyers criteria, thus the bid button being an offer. Furthermore, selecting parameters such as bandwidth for the selection of commercials is a well-known parameter such as disclosed by Bryant and Hane as indicated in the "Response to Arguments"), the purchase offer containing advertisement opportunity characteristics, and in response to the purchase offer, receiving one or more bids (col.7 lines 64 - col.8 lines 27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles, Bryant, and Del Sesto to incorporate the teachings of selecting two or more targeted advertisements associated with the received plurality of requests, wherein each of the selected advertisements fit the avail bandwidth and subscriber characteristics of the advertisement opportunity and of presenting a purchase offer for the opportunity to advertisers associated with the

selected two or more targeted advertisements in response to the selecting two or more targeted ads, the purchase offer containing advertisement opportunity characteristics, and in response to the purchase offer, receiving one or more bids as taught by Feezell, for the mere benefit of being able to provide avail offers to eligible bidders, thereby reducing unnecessary bids for the system and unnecessary avail listings for ineligible bidders .

Regarding claim 2, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said selecting targeted advertisements includes selecting advertisements having minimum bandwidth requirements in close proximity to the avail bandwidth. (See Bryant, col. 5 lines 4-9 which discloses fill segment bandwidths in "close" proximity)

Regarding claim 3, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said selecting targeted advertisements includes selecting advertisements having minimum bandwidth requirements less than or equal to the avail bandwidth (See Bryant, col. 5 lines 4-9 and Fig. 3 which discloses bandwidths of the fill segments being less than the avail bandwidth).

Regarding claim 5, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said determining

subscriber characteristics includes receiving node characteristics that are an aggregate of the subscriber characteristics for subscribers associated with a node (See Carles, col. 3 lines 16-62 which discloses the conveyed information pertains to a group of households).

Regarding claim 6, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said determining subscriber characteristics includes receiving the subscriber characteristics from publicly available data (See Bryant, col. 4 lines 1-37; Carles, col. 4 lines 4-35, and col.5 lines 1-30)

Regarding claim 7, the combination teaches all of the claim limitations of the method of claim 6. The combination does not explicitly teach of wherein the publicly available data includes real estate records and tax assessment records. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the parameters utilized to include such data as a matter of preference, at least for the desirable benefit of more accurately describing the user.

Regarding claim 8, the combination teaches all of the claim limitations of the method of claim 1, wherein said determining subscriber characteristics includes receiving subscriber characteristics associated with a group of subscribers (See Carles col. 3 lines 16-62 where the information pertains to a group of households).

Regarding claim 9, the claim has been analyzed and rejected for the reasons set forth in the rejection of claim 1.

Regarding claim 10, the combination teaches all of the claim limitations of the system of claim 1, the combination further teaches of wherein the intended target market characteristics include demographics (See Carles, col. 5 lines 1-30 which refers to demographics).

Regarding claim 11, the combination teaches all of the claim limitations of the method of claim 10, the combination further teaches of wherein a probabilistic distribution is assigned to various demographic attributes (See Carles, col. 5 lines 1-45 which refers to weighting on a statistical analysis).

Regarding claim 12, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of comprising inserting the targeted advertisement associated with the winning advertiser into the avail (See Carles, Abstract and analysis of claim 1).

Regarding claim 13, the combination teaches all of the claim limitations of the method of claim 12, further comprising delivering the advertisement to at least some subset of the subscribers (See Carles, Abstract and col. 5).

Regarding claim 14, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subset includes individual subscribers (See Carles, Abstract and col. 5).

Regarding claim 15, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subset includes a group of subscribers (See Carles, Abstract and col. 5).

Regarding claim 16, the combination teaches all of the claim limitations of the method of claim 15, the combination further teaches of wherein the groups of subscribers are generated based on connectivity (See Carles, Abstract and col. 5).

Regarding claim 17, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subscribers include at least some subset of individuals, households, and groups (See Carles, Abstract and col. 5)

Regarding claim 18, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of a multiplexed stream (See Bryant, Fig. 6 and col. 6 lines 55- col. 7 lines 17 which discloses multiple programs in the video stream; also refer to the analysis of claim 1)

Regarding claim 19, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claims 1-3.

Regarding claim 20, the combination teaches all of the claim limitations of the method of claim 19, the combination further teaches of a multiplexed stream (See

Bryant, Fig. 6 and col. 6 lines 55- col. 7 lines 17 which discloses multiple programs in the video stream; also refer to the analysis of claims 18-19)

Regarding claim 22, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claims 1-3. Furthermore, acceptable format is dependent upon the operator and viewer and sufficient level of comparison can be any level depending on how the level is being gauged. Also refer to Carles col. 8.

Regarding claim 23, the combination teaches all of the claim limitations of the method of claim 22, the combination does not explicitly teach of comprising halting the insertion of the digitally compressed advertisement when the minimum acceptable bit rate is greater than the advertisement insertion opportunity bit rate. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included an error detection step as to being able to prevent a possible insertion overload by sending a fill segment requiring greater bandwidth than what the avail can handle or process.

Regarding claim 25, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claim 1.

Contact

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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